Supreme Court, U.S.
FILED

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No. 99-_____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

STINNETT ENTERPRISES, INC.,
Petitioner

V.

DRAGON TEXTILE MILLS,
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER
11 November 1999

QUESTIONS PRESENTED

1. Whether the court of appeals' use of the federal policy in favor of arbitration resulted in a holding whereby the federal policy was allowed to consume this Court's holdings in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989) and *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)?

2. Whether the court of appeals' failure to apply well established rules of contract construction resulted in a holding in violation of this Court's holdings in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989) and *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)?

LIST OF PARTIES

The parties to this case are:

Stinnett Enterprises, Inc.,

and

Dragon Textile Mills

Pursuant to Rule 29.1, Petitioner, Stinnett Enterprises, Inc., is not a parent or subsidiary of any other corporation, but rather is a closely held corporation in which the sole shareholder is Jane Anne Stinnett.

ERIC G. WALRAVEN

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STINNETT ENTERPRISES, INC.,
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V.

DRAGON TEXTILE MILLS,
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, STINNETT ENTERPRISES, INC., (Stinnett), Plaintiff-Appellee below, respectfully submits this Petition for Writ of Certiorari to review the reversal of an order in Petitioner's favor and against Respondent, DRAGON TEXTILE MILLS, (Dragon), Defendant-Appellant below.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is not reported, but was only issued under the following docket number: No. 98-1211, and is reproduced in APPENDIX 1. The interlocutory order of the district court is unreported but is reproduced in APPENDIX 2.

STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals denied Stinnett's Petition for Panel Rehearing on September 16, 1999. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Federal Arbitration Act, 9 U.S.C.A. § 1 et seq.

REASONS FOR GRANTING THE WRIT

This writ should be granted because the Fifth Circuit Court of Appeals issued an opinion in this case that contradicts this Court's holdings in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989) and *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985). In essence, the court of appeals, in its haste to apply the federal policy in favor of arbitration, failed to even attempt to apply, much less correctly apply, the rules of contract construction. Although this Court has held that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . ." and that "the Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues

should be resolved in favor of arbitration, . . ." such holdings do not give the courts the authority to disregard state law rules of contract construction in order to find that an ambiguity exists in an arbitration clause, thereby requiring the arbitration of issues to which the parties did not agree.

STATEMENT OF THE CASE

A. *Proceedings and Results*

This is a case wherein the scope of a contract's arbitration clause has been brought into question. Stinnett filed a Motion for Temporary Restraining Order in the district court on March 18, 1998 seeking to restrain Dragon from arbitrating an alleged dispute between the parties. The district court granted the temporary restraining order that same day. The district court then set Stinnett's Motion for Preliminary Injunction for hearing on March 27, 1998.

Dragon filed its Motion to Stay or Dismiss Proceeding, or in the Alternative to Compel Arbitration on March 23, 1998, in which it argued that the arbitration clause in the contract between the parties encompassed the alleged dispute. The district court granted the preliminary injunction on March 27, 1998.

The district court denied Dragon's Motion to Stay or Dismiss Proceeding, or in the Alternative to Compel Arbitration by order signed June 8, 1998, wherein it held the arbitration clause was limited in scope to only cover claims arising from the *force majeure* clause of the contract.

Dragon appealed to the court of appeals, which reversed, holding that the arbitration clause was not limited only to claims arising from the *force majeure* clause, but encompassed all

claims arising from the contract. Alternatively, the court of appeals held that the arbitration clause was ambiguous. Therefore, in accordance with the federal policy in favor of arbitration, the matter should have been referred to arbitration.

B. ***Statement of Facts***

On September 12, 1994, Stinnett agreed, by written confirmation, to sell 800 metric tons of cotton to Dragon in three shipments. The terms of the agreement are clear and beyond dispute that Stinnett would not be required to ship any cotton until Dragon opened a proper, irrevocable Letter of Credit at least seven days before any shipment. Specifically, that provision states:

> Irrevocable letter of credit to be opened in favor of the seller before shipment on a Prime U.S. bank. L/C (letter of credit) to be opened seven days before first date of shipment unless otherwise agreed. Seller shall have at least 30 days after L/C becomes available to make shipment as per L/C Rules of the American Cotton Shippers Association . . .

The contract also provided that "ACSA Container Trade Rules are to apply," and Section B of the trade rules provides that the cotton may be shipped by "intermodal transportation at the option of the party responsible for freight booking." Stinnett chose to utilize the option to ship by intermodal transportation via microbridge, in order to save freight expenses. However, the shipping company that Dragon required Stinnett to use for shipment of the cotton overseas did not offer a microbridge. By refusing microbridge shipment, Dragon delayed the shipment of cotton and caused Stinnett increased shipping costs. Stinnett shipped the first shipment of cotton as agreed and Dragon eventually paid for the first shipment.

When Dragon failed to open letters of credit for the next shipment, Stinnett refused to ship any more cotton. After breaching the Contract, Dragon attempted to force Stinnett to arbitrate with The Liverpool Cotton Association, Ltd. in Liverpool England.

The Contract's arbitration clause, mutually agreed upon by the parties, provides for "Friendly or Liverpool arbitration Liverpool rules as mentioned under No. 8 of our general conditions."

No. 8 of the General Conditions provides:

> *Force Majeure*: Sellers are not liable for temporary delays caused by conditions beyond their control. Buyers agree to extend letters of credit.
>
> Should fulfillment of this contract be rendered impossible in any part and/or in any respect, by reasons of acts of God, including but not limited to fires, floods, earthquakes or accidents, acts of war, blockades, embargo, strikes, riots, rebellions, or other restraints of rulers or organized acts, or any other emergency beyond the control of the buyer and seller, both parties shall decide by mutual agreement how the contract shall be fulfilled, or canceled at the market difference. In the event the parties are unable to arrive at a mutually satisfactory agreement, then the matter shall be referred to Arbitration.

On August 3, 1995, Stinnett filed suit in the 140th District Court in Lubbock County, Texas, requesting declaratory relief and a temporary restraining order. The Court entered a

temporary restraining order restraining Dragon from arbitrating the cause.

On September 1, 1995, Dragon removed the case to federal court. The parties tentatively settled their dispute, but were unable to agree on a written settlement agreement. The primary disagreement between the parties was that Dragon insisted that the Liverpool Arbitration Rules would apply to all dispute between the parties.

On April 5, 1996, the district court dismissed the case with prejudice. Neither party appealed that order and no request was made to reinstate the case.

On January 9, 1998, Stinnett was again notified by the Liverpool Cotton Association, Ltd., that Dragon was seeking to arbitrate the same dispute. On January 23, 1998, Stinnett again filed an action in the 140th District Court in Lubbock County, Texas, requesting declaratory relief and a temporary order restraining Dragon from proceeding with arbitration. The 140th District Court of Lubbock County, Texas, entered a temporary restraining order and set a hearing for temporary injunction. Dragon again removed the case to federal court, and the temporary restraining order expired under its own terms. Shortly thereafter, Stinnett was notified that an arbitrator had been appointed to represent it, without its consent, to proceed with arbitration on or shortly after March 20, 1998.

ARGUMENT

The parties properly limited the scope of the arbitration clause at issue. The district court merely followed the primary objective of the Federal Arbitration Act by ruling, in effect, that only those disagreements that fall within the restricted scope of the arbitration agreement shall be arbitrated. The dispute

between the parties simply does not fall within that restricted scope. The court of appeals was, therefore, in error when it reversed and remanded the district court's denial of Dragon's Motion to Stay or Dismiss Proceeding, or in the Alternative to Compel Arbitration.

A. *The parties exercised their rights as recognized by this Court to limit the scope of the arbitration clause in the contract.*

As stated earlier, the contract in question contained the following arbitration clause: "Friendly or Liverpool arbitration Liverpool rules as mentioned under No. 8 of our general conditions." In its Opinion, the court of appeals held that that Contract provision was ambiguous and, therefore, the case should have been ordered to arbitration. *(Appendix 1, p. 2)* According to the court of appeals, this ambiguous provision can be read to mean that any and all disputes between the parties are subject to Liverpool Arbitration, or, although it is unclear, it appears to have held that the ambiguous provision can also be read to mean that only matters covered by General Condition No. 8 of the Contract would be arbitrated. *(Appendix 1, p. 5)*

The existence of an agreement to arbitrate, or whether the parties agree to arbitrate a certain dispute, is determined by the law of contracts. In that regard, the terms between the parties must be considered. *AT & T Technologies, Inc. v. Communication Workers of America,* 475 U.S. 643 (1986). Additionally, in order to properly consider the terms used by the parties and determine whether a contract provision is in fact ambiguous, the rules of contract construction must be applied to the provision in question. Although this Court does not ordinarily sit to review the interpretation of private contracts, as that is a question of state law, this Court must review the court of appeals's lack of interpretation because that court's erroneous interpretation has led to a situation whereby the federal policy

in favor of arbitration has been allowed to consume the right of the parties to limit the scope of an arbitration clause.

This Court has held that arbitration is a matter of contract. *Id.* at 1418. A party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. *Id.* Thus, the controversy between the parties "must come within the contract's arbitration provision before the court can order arbitration." *Beckham v. William Bayley Co.*, 655 F.Supp. 288, 290-1 (N.D. Tex. 1987) citing *Explo, Inc. v. Southern Natural Gas Co.*, 788 F.2d 1096, 1098 (5th Cir. 1986). Additionally, the federal policy favoring arbitration cannot be used to create an ambiguity in an arbitration clause. *Belmont Constr., Inc. v. Lyondell Petrochemical Co.*, 896 S.W.2d 352, 356-57 (Tex.App.-Houston [1st Dist.] 1995, no writ). That, however, is exactly what the court of appeals did. By finding the contract provision in question ambiguous at first blush and then applying the public policy in favor of arbitration, the Court omitted an essential step in its analysis, contract construction. When there is a dispute as to the meaning of a contract provision, the Court must apply the appropriate canons of construction in an attempt to ascertain its meaning.

"Arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit." *Volt Information Sciences, Inc.*, 489 U.S. at 479. Furthermore, it is well understood that parties may limit by contract the issues that they will arbitrate. *Mitsubishi Motors Corp.*, 473 U.S. at 628. That is exactly what the parties in this case chose to do, and Dragon should not now be allowed to change that agreement.

Canons of Construction

The rules of contract construction in Texas are much the same as in all other states. Specifically, in Texas, "[l]anguage

used by parties in a contract should be accorded its plain, grammatical meaning unless it definitely appears that the intention of the parties would thereby be defeated." *Lyons v. Montgomery*, 701 S.W.2d 641, 643 (Tex. 1985) citing *Fox v. Thoreson*, 398 S.W.2d 88, 92 (Tex. 1966). "The terms of a contract must be construed, if possible, to mean something rather than nothing," *Car Wash Systems of Texas, Inc. v. Brigance*, 856 S.W.2d 853, 858 (Tex.App.–Ft. Worth 1993, no writ), and a court must attempt to harmonize and give effect to all provisions of a contract, so that none is rendered meaningless. *Intratex Gas Co. v. Puckett*, 886 S.W.2d 274, 277 (Tex.App.–El Paso 1994, no writ); see e.g., *Asset Restructuring Fund, L.P. v. Liberty National Bank and Resolution Trust Corporation*, 886 S.W.2d 548, 551 (Tex.App.–Austin 1994, writ denied); *Questa Energy Corporation v. Vantage Point Energy, Inc.*, 887 S.W.2d 217, 221 (Tex.App.–Amarillo 1994, writ denied); *G. H. Bass & Co. v. Dalsan Properties–Abilene*, 885 S.W.2d 572, 576 (Tex.App.–Dallas 1994, no writ). Furthermore, and most importantly, when construing a contract, "all language is presumed to have some meaning and is not regarded as surplusage." *R. H. Sanders Corp. v. Haves*, 541 S.W.2d 262, 264 (Tex.Civ.App.–Dallas 1976, no writ). If this is not done, then the meaning given to a contract provision will necessarily be erroneous.

When constructing this Contract, the Court must examine and consider the entire writing, that is, the Court must look at the four corners of the document, *Puckett*, 886 S.W.2d at 277, and must attempt to harmonize all of its provisions *Id.* To harmonize means to bring into agreement, conformity, or accordance with. Black's Law Dictionary, 6th Edition; p.718; see also, The American Heritage Dictionary, Second College Edition; p. 595. Thus, this Court must attempt to construct this Contract so that all provisions are in agreement. To disregard certain phrases in a contract, as the court of appeals did, is clearly the antithesis of harmonizing a contract.

Ambiguity

"If a written contract is so worded that it can be given a definite or certain legal meaning, then it is not ambiguous." *National Union Fire Ins. Co. of Pittsburgh, PA v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995). Additionally, "[o]nly where a contract is first determined to be ambiguous may the courts consider the party's interpretation, and admit extraneous evidence to determine the true meaning of the instrument." *Id.* at 520. When these rules of construction are applied to the arbitration clause in question, it becomes clear that no ambiguity exists, and the district court's determination of this matter should be affirmed.

Application of the Canons of Construction

The court of appeals interpreted the provision "Friendly or Liverpool Arbitration, Liverpool Rules as mentioned under No. 8 of our General Conditions," in two different ways to arrive at the decision that an ambiguity exists in the contract. *(Appendix 1, p. 5)* First, the Court interpreted the phrase "as mentioned under No. 8 of our General Conditions," as surplusage. *Id.* In fact, the court admitted as much in its opinion when it stated "[w]e admit that this reading is troublesome in that, if the arbitration clause were meant to be applied to the entire contract, there would appear to be no need for the additional verbiage 'as mentioned under No. 8 of our general conditions.'" *Id.*

This erroneous interpretation resulted in a construction of the Contract provision whereby such provision meant that the parties agreed to arbitrate **all** claims arising under the contract by Liverpool Arbitration, Liverpool Rules, and also that any claims arising under No. 8 of the General Conditions would also be arbitrated by Liverpool Arbitration, Liverpool Rules. In such an instance, the last half of the contract provision is obviously

being read as surplusage, or irrelevant information. This the court cannot do.

The court must first assume that none of the language used by the parties is surplusage. *Haves*, 541 S.W.2d at 264. Only when this assumption gives rise to contradictory terms should the Court regard the language as surplusage. In the present case, there is no reason to do so. The specific phrase can be given its plain grammatical meaning without giving rise to any contradictory interpretation. To the contrary, when that specific language is not read as surplusage, it clearly becomes a limiting term – limiting arbitration only to those claims arising under No. 8 of the General Conditions.

Second, the court of appeals interpreted the phrase "as mentioned under No. 8 of our General Conditions," to have no meaning. *(Appendix 1, p. 5)* This the court also cannot do. In its opinion, the court of appeals stated, "[i]t is horn-book law that the terms of a contract should not be read in such a way as to render them devoid of meaning. In this case, however, even if the words were utterly meaningless, our reading of the words 'as mentioned' does not lead to a meaningless term but instead renders a phrase contained in one of the contract terms meaningless. However, it is not implausible that the words mean that Liverpool rules apply to arbitration under paragraph 8, as well as to the agreement reflected in the specific terms that appear on the front of the contract." (*Appendix 1, pp.4-5*) Such a statement is *non sequitur*. Clearly, if a phrase within a contract term is given no meaning, the meaning of the term is changed. Consider the following example: Suppose a delivery order stated that a certain bicycle was to be delivered to the blue house on 5th Street. There is nothing patently ambiguous about that order. However, if the deliveryman chose to give no meaning to the phrase "to the blue house," the order would obviously be ambiguous. No one reading that order would know where on 5th Street to deliver the bicycle.

The arbitration clause in question is much the same as the example above. Such clause provides for "Friendly or Liverpool arbitration Liverpool rules as mentioned under No. 8 of our general conditions." Refusing to give meaning to the phrase "as mentioned under No. 8 of our general conditions," is certainly akin to the removal of the phrase "to the blue house," in the example given. Those two phrases clearly limit the more general language used in the remainder of the term. To simply delete those phrases changes the meaning of terms from narrowly tailored terms inserted into a contract for a specific purpose to broad generalizations. Thus, the court of appeals' statement that somehow it is proper and acceptable to disregard phrases within contract terms without changing the meaning of the term itself is ludicrous.

A court must attempt to give effect to all provisions of a contract so that none will be rendered meaningless. *Puckett*, 886 S.W.2d at 277. By effectively deleting the phrase "as mentioned under No. 8 of our General Conditions" from the Contract provision in question, the Court has completely changed the intentions of the parties as evidenced by the four corners of the Contract. Such an interpretation of the Contract is in violation of the rules of contract construction followed by the courts of Texas. *Id.* Instead, what this Court should do is give all words and phrases within the Contract provision in question their normal grammatical meaning while harmonizing all provisions of the Contract. *National Union Fire Ins. Co. of Pittsburgh, PA*, 907 S.W.2d at 520; *Puckett*, 886 S.W.2d at 277. When this is done, the Contract provision in question is clearly a statement that evidences the intentions of the parties to the Contract that any claims arising under No. 8 of the General Conditions of the Contract, *force majeure*, will be arbitrated pursuant to friendly or Liverpool Arbitration. Liverpool Rules. That Contract provision is not ambiguous, but rather an acknowledgment by the parties that any arbitration between the parties will be limited to those disputes, if any, arising under the

force majeure clause of the Contract.

The court of appeals also erroneously construed the Contract provision in question against Stinnett, the drafter of the Contract. Although that is a recognized rule of construction in contract cases, such a rule is not to be used when a patent ambiguity existed in the contract such that would put the other party on notice that the ambiguity existed. *Reliable Building Maintenance Co. v. United States*, 31 Fed. Cl. 641 (1994). In that instance, the other party is put on notice of inquiry as to the meaning of the alleged ambiguous provision. Thus, if this Court is to accept the argument made by Dragon, clearly the contested provision contains a patent ambiguity that Dragon was well aware of, thereby putting Dragon on notice of inquiry as to the true meaning of this term. Therefore, this Court should not construe any provision in this Contract against the drafter, Stinnett. *Id.*

The court of appeals also erroneously held that the placement of the clause somehow made the clause ambiguous. This is not so. Under the doctrine of incorporation by reference, if one provision references another, the second provision properly constitutes part of the first. *City of Port Isabel v. Shiba*, 976 S.W.2d 856, 858 (Tex.App.–Corpus Christi 1998, pet. den.) Thus, the *force majeure* provision necessarily became part of the arbitration clause on the front of the Contract when it was referenced as "No. 8 of our general conditions," *Id.*, and cannot be made the basis of a finding of ambiguity.

If the court of appeals's interpretation of the Contract and arbitration clause contained therein is used, then the Liverpool Cotton Association Rules will be allowed to consume the intentions of the parties as set forth in the Contract. The court of appeals' interpretation of the Contract is therefore contrary to the Federal Arbitration Act's primary purpose, which is to ensure that private agreements to arbitrate are

enforced according to their terms. *Volt Information Sciences, Inc.*, 489 U.S. at 479. The terms of the agreement between the parties are clear. While the Liverpool Cotton Association Rules regarding arbitration are incorporated into the Contract, those Rules are specifically limited by the terms of the Contract. Specifically, the parties agreed to limit arbitration to only those disputes covered by Paragraph 8 of the General Conditions to the Contract, i.e., *force majeure*.

B. *The dispute between the parties does not fall within Paragraph 8 (Force Majeure).*

Although the court did not address the issue, Dragon argued to the court of appeals that flooding in California caused delays in shipment of cotton from Stinnett to Dragon thereby triggering the arbitration clause in the Contract. Such is not the case. While there were delays caused by flooding in California, those were delays in the first shipment of cotton. As acknowledged by Stinnett, all of the cotton required by the first shipment was sent to Dragon, and Dragon eventually paid for all cotton included in the first shipment. Further, Dragon does not state in its Motion to Compel Arbitration on what claims it was pursuing arbitration against Stinnett. Without such information, the court of appeals could not even begin to make a determination as to whether the disputed claims fell within the properly limited scope of the arbitration clause. For these reasons, this Court should reverse the court of appeals' decision and render judgment in favor of Stinnett.

The second shipment of cotton, however, was never shipped because Dragon never opened a Letter of Credit as required by the Contract. The dispute over whether Dragon

breached the Contract by failing to open the Letter of Credit for the second shipment is the basis of this lawsuit. The delays to the first shipment, which was all eventually shipped and paid for, have no bearing on the dispute now before the Court. The *force majeure* clause, therefore, was never triggered and cannot now be made the basis of a Motion to Compel Arbitration.

Additionally, Dragon's reliance on *Bloom v. Hearst Entertainment, Inc.*, 33 F.3d 518 (5th Cir. 1994), is likewise misplaced. In *Bloom*, the Fifth Circuit was presented with a contract that included a granting clause whereby Hearst Entertainment was granted an option to acquire worldwide motion picture and television rights to a book. *Id.* at 520. In determining that this granting clause was ambiguous, this Court found that both parties gave reasonable constructions to the clause. In one instance, worldwide motion picture and television rights could be read to exclude video rights. On the other hand, by using the precise definition of video, a reasonable argument could be made that video rights were included in the granting clause. *Id.* at 522. Faced with a clause that can be given two different but reasonable meanings, this Court found that the granting clause was ambiguous. *Id.*

The present case does not present such a situation. It is clear that while the Contract in question does refer to "Liverpool Arbitration, Liverpool Rules," the clause goes on to state, "[a]s mentioned under No. 8 of our General Conditions." Thus, the only way that Dragon can create the alleged ambiguity in the Contract is to omit a material portion of the arbitration clause. Once the arbitration clause is read *in toto*, it is clear that no

ambiguity exists and that the parties merely limited the scope of the arbitration clause. *Mitsubishi Motors Corp.*, 473 U.S. at 628. Since the parties did not contract to arbitrate any other disputes under General Conditions No. 8, the Contract dispute before the court is not arbitrable. *Perry v. Thomas*, 482 U.S. 483, 493 (1987).

Finally, the court of appeals failed to reach the argument made by Stinnett that the dispute before this Court is not arbitrable because, as a condition of Stinnett's performance, Dragon was required to open its Letter of Credit at least seven days prior to any shipment. Should the opening of the Letter of Credit be found by the court to be conditional in the Contract, and if Dragon did not fulfill that condition, then Dragon is not entitled to an order compelling arbitration. *Weekley Homes, Inc. v. Jennings*, 936 S.W.2d 16 (Tex.App.--San Antonio 1996, writ den'd). A breach of a condition precedes and affects the enforceability of the provision in which the condition is included. When Dragon failed to open Letters of Credit pursuant to the Contract, Dragon was precluded from enforcing any arbitration clause in order to enforce the performance of Stinnett.

CONCLUSION

It is clear from a reading of the Contract that the parties chose to limit the scope of the arbitration clause. The dispute that Dragon now wishes to arbitrate simply does not fall within the scope of that clause. The district court therefore did not err

in denying Dragon's Motion to Stay or Dismiss Proceeding, or in the Alternative to Compel Arbitration.

For the reasons stated, the Supreme Court of the United States should reverse the opinion of the United States Court of Appeals for the Fifth Circuit and affirm the judgment of the United States District Court, Northern District of Texas, Lubbock Division, and grant such further relief as is just.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-1211

STINNETT ENTERPRISES, INC.,

Plaintiff-Appellee,

versus

DRAGON TEXTILE MILLS, INC.,

Defendant-Appellant.

Appeal from the United States District Court for
the Northern District of Texas, Lubbock
(5:98-CV-32-C)

Before JOLLY and SMITH, Circuit Judges, and STAGG,* District Judge. E. GRADY JOLLY, Circuit Judge:**

Stinnett Enterprises, Inc. ("Stinnett") and Dragon Textile Mills, Inc. ("Dragon") entered into a contract under which Stinnett would ship cotton to Dragon. The parties failed to comply with the agreement after the first shipment and Dragon

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*District Judge of the Western District of Louisiana, sitting by designation.

**Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

sought to arbitrate the dispute pursuant to a clause in the contract compelling arbitration. Stinnett filed a complaint seeking declaratory and injunctive relief barring Dragon from arbitrating the dispute and Dragon filed a motion to compel arbitration. The district court held that the arbitration clause was limited to disputes arising out of the force majeure provision of the contract and granted a preliminary injunction in Stinnett's favor. Because we find that the arbitration clause does not unambiguously limit arbitration to force majeure disputes, we reverse.

Stinnett through its agent, P. T. Worldwide, Inc. ("P.T."), entered into a contract with Dragon under which Stinnett would provide 800 metric tons of cotton to Dragon in three separate shipments. The contract, which was prepared by Stinnett, includes the following sentence on the front of the one-page contract where the specific terms of the agreement appear:

> Friendly or Liverpool arbitration Liverpool rules as mentioned under No. 8 of our general conditions.

The underlined words are typed in. The other words are a part of the form contract that embodies the specific terms of the agreement. The general conditions, which are also part of the form, were printed on the back of the one-page contract. No. 8 of the general conditions reads as follows:

> 8. Force Majeure: Sellers are not liable for temporary delays caused by conditions beyond their control. Buyers agree to extend letters of credit upon request.
>
> Should fulfillment of this contract be rendered impossible in any part and/or in any respect by reason of acts of God, including but not limited to fires, floods, earthquakes or accidents, acts of

> war, blockades, embargo, strikes, riots, rebellions or other restraints of rules or organized acts, or any other emergency beyond the control of the new buyer and seller, both parties shall decide by mutual agreement how the contract shall be fulfilled, or canceled at the market difference. In the event the parties are unable to arrive at a mutually satisfactory agreement, then the matter shall be referred to arbitration.

Stinnett apparently believed that the contract language limits arbitration to disputes arising out of the force majeure clause. Dragon, on the other hand, apparently regarded the sentence on the front of the contract as providing for arbitration of all disputes arising out of the contract.

After delivering its first shipment approximately three months later than it should, Stinnett refused to make any further deliveries, claiming that Dragon had breached the contract. Dragon sought to arbitrate the dispute in England, and Stinnett responded by seeking injunctive relief in Texas state court. The case was removed to federal court and Stinnett sought a preliminary injunction. The district court granted relief after holding an evidentiary hearing. Dragon filed a motion to stay or dismiss the proceeding pending arbitration or, in the alternative, to compel arbitration ("motion to compel arbitration"). The district court denied the motion and Dragon filed a notice of interlocutory appeal. The district court sua sponte stayed the proceedings below pending appeal.

We review the denial of a motion to compel arbitration de novo. Webb v. Investacorp, Inc., 89 F.3d 252, 257 (5th Cir. 1996). We review the district court's determination of whether a contract is ambiguous de novo, but, to the extent that determination rests on extrinsic evidence of usage of trade, the issue may involve a question of fact requiring review under a clearly erroneous standard. Bloom v. Hearst Entertainment,

Inc., 33 F.3d 518, 522-23 (5th Cir. 1994).

Dragon contends that the contract compels arbitration of all disputes. Dragon further contends that, even if the more restrictive reading of the contract urged by Stinnett is adopted, the dispute at issue here should still be subject to arbitration. Because we agree with Dragon that the arbitration clause compels arbitration of all claims arising out of the contract, we do not address Dragon's second argument.

Dragon argues that the contract provided for arbitration with respect to all disputes arising out of the contract. According to Dragon, the term "Liverpool Arbitration" as used in the industry implies that disputes in the contract will be resolved through arbitration. Stinnett argues that because the complete clause reads "Friendly or Liverpool arbitration Liverpool rules as mentioned under No. 8 of our general conditions," the contract limits arbitration to disputes related to general provision No. 8–the force majeure provision. Dragon responds that the term "as mentioned" means citing, noting or referring to No. 8. It does not mean, "as restricted to the circumstances described in No. 8" or "as limited by No. 8." At best, Dragon argues, the term is ambiguous, in which case the term should be construed in Dragon's favor.

We find that Dragon has the better argument. Federal policy favors arbitration and "ambiguities as to the scope of an arbitration clause itself must be resolved in favor of arbitration." Volt Information Sciences, Inc. v. Board of Trustees, 489 U.S. 468, 476 (1989); see also Moses H. Cone Memorial Hospital v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983) (issues of contract language construction should be resolved in the favor of arbitration). Second, because Stinnett drafted the contract, the language of the agreement is subject to "the common-law rule of contract interpretation that a court should construe ambiguous language against the interest of the party that drafted it." Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62-63 (1995).

Although the parties could have intended the arbitration

clause on the front of the contract to be limited to the force majeure provision, the placement of the clause (as a separate clause from the force majeure provision) and the use of the term "as mentioned" make the clause at least ambiguous. We therefore must accept Dragon's reading of the clause.

We admit that this reading is troublesome in that, if the arbitration clause were meant to be applied to the entire contract, there would appear to be no need for the additional verbiage "as mentioned under No. 8 of our general conditions." It is horn-book law that the terms of a contract should not be read in such a way as to render them devoid of meaning.[1] In this case, however, even if the words were utterly meaningless, our reading of the words "as mentioned" does not lead to a meaningless term but instead renders a phrase contained in one of the contract terms meaningless. However, it is not implausible that the words mean that Liverpool rules apply to arbitration under paragraph 8, as well as to the agreement reflected in the specific terms that appear on the front of the contract.

Finally, we would point out that, if we interpreted the clause as being limited to general provision No. 8, we would effectively be rendering the term "friendly" redundant or meaningless inasmuch as provision No. 8 states that the parties may by mutual agreement resolve any issues between them arising under that provision.

In short, we are confronted with an ambiguous clause. We therefore conclude that the arbitration clause should be read in favor of requiring arbitration of all disputes arising out of the

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[1]Section 203 of the Restatement 2nd provides in part that: In the interpretation of a promise or agreement or a term thereof, the following standards of preference are general applicable: (a) an interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.

contract. On that basis, we reverse the district court's ruling.

For the foregoing reasons, the rulings and orders of the district court are REVERSED and the case is REMANDED for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STINNETT ENTERPRISES INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DRAGON TEXTILE MILLS, INC.,	)	
	)	Civil Action No.
Defendant.	)	5:98-CV-032-C

ORDER

On this day the Court considered Defendant's Motion to Stay or Dismiss Proceeding, or, in the Alternative, to Compel Arbitration which was filed on March 23, 1998. After reviewing the motion and response, and in light of the evidence adduced at the injunction hearing, the Court **DENIES** the motion.

SO ORDERED.

Dated this 8th day of June, 1998.

SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE